

INTERNAL REVENUE SERVICE

February 6, 2002

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CONEX100873-02

CC:TEGE

[REDACTED]

Dear [REDACTED]:

This letter is in response to your inquiry dated October 31, 2001, asking for our further thoughts on whether the IRS has the authority to issue guidance on issues concerning statutory employees. You asked us to consider the comments that the [REDACTED] and the [REDACTED] gave to you in response to our initial letter dated July 25, 2001.

Upon reconsideration, we agree section 530(b) does not prohibit us from considering guidance in the form of regulations or revenue rulings dealing with the employment tax status of particular workers such as bakery distributors. [See House Report No. 95-1748, 95th Cong., 2d sess]. However, we still disagree with the [REDACTED] view that General Counsel Memorandum (GCM) 39853 is incorrect.

We believe GCM 39853, which is consistent with the IRS position provided in Rev. Rul. 75-269, 1975-2 C.B. 401, correctly interprets the term "facilities" included in section 3121(d) of the Internal Revenue Code. The legislative history of section 3121(d) shows a clear Congressional concern that the term facilities should not be applied broadly. [See Senate Report No. 1669, 81st Cong., 2d sess]. The [REDACTED] broad interpretation of section 3121(d) would frustrate the Congressional intent to treat such workers as employees.

Although not persuaded to withdraw the GCM, I would be happy to meet with members of the [REDACTED]. If they would like to discuss this matter further, please ask them to call me at (202) 622-6010 or [REDACTED], or my staff at (202) 622-6040. I hope this information is helpful in responding to the

[REDACTED] and the [REDACTED].

Sincerely,

MARY OPPENHEIMER
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government Entities)